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20 ROBERT TRENT JONES LICENSING GROUP, LLC

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**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

16 ROBERT TRENT JONES II, INC. and
17 ROBERT TRENT JONES LICENSING
18 GROUP, LLC

Case No. 07-CV-04913-SC

19 Plaintiffs,

STIPULATED PROTECTIVE ORDER

20 v.

21 GFSI, INC. d/b/a GEAR FOR SPORTS,
22 INC.

23 Defendant.

1 1. **PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation would be
 5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
 6 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
 7 blanket protections on all disclosures or responses to discovery and that the protection it affords
 8 extends only to the limited information or items that are entitled under the applicable legal
 9 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
 10 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
 11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
 12 and reflects the standards that will be applied when a party seeks permission from the court to
 13 file material under seal.

14 2. **DEFINITIONS**

15 2.1 **Party**: any party to this action, including all of its officers, directors, employees,
 16 consultants, retained experts, and outside counsel (and their support staff).

17 2.2 **Disclosure or Discovery Material**: all items or information, regardless of the medium
 18 or manner generated, stored, or maintained (including, among other things, testimony,
 19 transcripts, or tangible things) that are produced or generated in disclosures or responses to
 20 discovery in this matter.

21 2.3 **“Confidential” Information or Items**: information (regardless of how generated,
 22 stored or maintained) or tangible things that qualify for protection under standards developed
 23 under F.R.Civ.P. 26(c).

24 2.4 **Receiving Party**: a Party that receives Disclosure or Discovery Material from a
 25 Producing Party.

26 2.5 **Producing Party**: a Party or non-party that produces Disclosure or Discovery
 27 Material in this action.

28 2.6. **Designating Party**: a Party or non-party that designates information or items
 29 that it produces in disclosures or in responses to discovery as “Confidential.”

30 2.7 **Protected Material**: any Disclosure or Discovery Material that is designated as
 31 “Confidential.”

1 2.8. Outside Counsel: attorneys who are not employees of a Party but who are
2 retained to represent or advise a Party in this action.

3 2.9 House Counsel: attorneys who are employees of a Party.

4 2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
their support staffs).

5 2.11 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
7 witness or as a consultant in this action and who is not a past or a current employee of a Party or
8 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an
9 employee of a Party or a competitor of a Party's. This definition includes a professional jury or
trial consultant retained in connection with this litigation.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
12 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
subcontractors.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only Protected Material
15 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
16 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
parties or counsel to or in court or in other settings that might reveal Protected Material.

17 4. DURATION

18 Even after the termination of this litigation, the confidentiality obligations imposed by
19 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
order otherwise directs.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
or non-party that designates information or items for protection under this Order must take care
23 to limit any such designation to specific material that qualifies under the appropriate standards. A
Designating Party must take care to designate for protection only those parts of material,
documents, items, or oral or written communications that qualify – so that other portions of the
24 material, documents, items, or communications for which protection is not warranted are not
25 designated.

swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions. If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, protection being asserted (“CONFIDENTIAL”).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL”) at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the protection being asserted (“CONFIDENTIAL”).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 2 Party or non-party offering or sponsoring the testimony identify on the record, before the close of
 3 the deposition, hearing, or other proceeding, all protected testimony, and further specify any
 4 portions of the testimony that qualify as “CONFIDENTIAL.” When it is impractical to identify
 5 separately each portion of testimony that is entitled to protection, and when it appears that
 6 substantial portions of the testimony may qualify for protection, the Party or non-party that
 7 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
 8 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
 9 testimony as to which protection is sought and to specify the protection being asserted
 10 (“CONFIDENTIAL”). Only those portions of the testimony that are appropriately designated for
 protection within the 20 days shall be covered by the provisions of this Stipulated Protective
 Order.

11 Transcript pages containing Protected Material must be separately bound by
 12 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,”
 13 as instructed by the Party or nonparty offering or sponsoring the witness or presenting the
 14 testimony.

15 (c) for information produced in some form other than documentary, and for any
 16 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 17 container or containers in which the information or item is stored the legend
 18 “CONFIDENTIAL.” If only portions of the information or item warrant protection, the
 19 Producing Party, to the extent practicable, shall identify the protected portions, specifying
 20 whether they qualify as “Confidential.”

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 22 designate qualified information or items as “CONFIDENTIAL” does not, standing alone, waive
 23 the Designating Party’s right to secure protection under this Order for such material. If material
 24 is appropriately designated as “CONFIDENTIAL” after the material was initially produced, the
 25 Receiving Party, on timely notification of the designation, must make reasonable efforts to
 assure that the material is treated in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s

1 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
2 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
3 waive its right to challenge a confidentiality designation by electing not to mount a challenge
4 promptly after the original designation is disclosed.

5 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
6 Party's confidentiality designation must do so in good faith and must begin the process by
7 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
8 with counsel for the Designating Party. In conferring, the challenging Party must explain the
9 basis for its belief that the confidentiality designation was not proper and must give the
10 Designating Party an opportunity to review the designated material, to reconsider the
11 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
12 designation. A challenging Party may proceed to the next stage of the challenge process only if it
13 has engaged in this meet and confer process first.

14 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
15 designation after considering the justification offered by the Designating Party may file and
16 serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
17 applicable) that identifies the challenged material and sets forth in detail the basis for the
18 challenge. Each such motion must be accompanied by a competent declaration that affirms that
19 the movant has complied with the meet and confer requirements imposed in the preceding
20 paragraph and that sets forth with specificity the justification for the confidentiality designation
21 that was given by the Designating Party in the meet and confer dialogue.

22 The burden of persuasion in any such challenge proceeding shall be on the Designating
23 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
24 question the level of protection to which it is entitled under the Producing Party's designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
27 or produced by another Party or by a non-party in connection with this case only for prosecuting,
28 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only
29 to the categories of persons and under the conditions described in this Order. When the litigation
30 has been terminated, a Receiving Party must comply with the provisions of section 11, below

1 (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving
2 Party at a location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
5 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated CONFIDENTIAL only to:

7 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
8 employees of said Counsel to whom it is reasonably necessary to disclose the information for
9 this litigation and who have signed the “Agreement to Be Bound by Protective Order” that is
10 attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
13 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

14 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is
15 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
16 Protective Order” (Exhibit A) and as to whom the procedures set forth in paragraph 7.3, below,
17 have been followed;

18 (d) the Court and its personnel;

19 (e) court reporters, their staffs, and professional vendors to whom disclosure is
20 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
21 Protective Order” (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is
23 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
24 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
25 Protected Material must be separately bound by the court reporter and may not be disclosed to
anyone except as permitted under this Stipulated Protective Order; and

26 (g) the author of the document or the original source of the information.

27 7.3 Procedures for Approving Disclosure of “CONFIDENTIAL” Information or Items to
28 “Experts”

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and suggest any additional means that might be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration in which the movant describes the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding the Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
3 LITIGATION.

4 If a Receiving Party is served with a subpoena or an order issued in other litigation that
5 would compel disclosure of any information or items designated in this action as
6 “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party, in writing (by
7 fax, if possible) immediately and in no event more than three court days after receiving the
8 subpoena or order. Such notification must include a copy of the subpoena or court order.

9 The Receiving Party also must immediately inform in writing the Party who caused the
10 subpoena or order to issue in the other litigation that some or all the material covered by the
11 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
12 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
13 caused the subpoena or order to issue.

14 The purpose of imposing these duties is to alert the interested parties to the existence of
15 this Protective Order and to afford the Designating Party in this case an opportunity to try to
16 protect its confidentiality interests in the court from which the subpoena or order issued. The
17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
18 its confidential material – and nothing in these provisions should be construed as authorizing or
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
22 Material to any person or in any circumstance not authorized under this Stipulated Protective
23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material,
25 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
 this Order, and (d) request such person or persons to execute the “Acknowledgment and
 Agreement to Be Bound” that is attached hereto as Exhibit A.

26 10. FILING PROTECTED MATERIAL. Without written permission from the Designating

1 Party or a court order secured after appropriate notice to all interested persons, a Party may not
2 file in the public record in this action any Protected Material. A Party that seeks to file under seal
3 any Protected Material must comply with Civil Local Rule 79-5.

4 11. **FINAL DISPOSITION.** Unless otherwise ordered or agreed in writing by the Producing
5 Party, within sixty days after the final termination of this action, each Receiving Party must
6 return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
7 Material" includes all copies, abstracts, compilations, summaries or any other form of
8 reproducing or capturing any of the Protected Material. With permission in writing from the
9 Designating Party, the Receiving Party may destroy some or all of the Protected Material instead
10 of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must
11 submit a written certification to the Producing Party (and, if not the same person or entity, to the
12 Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all
13 the Protected Material that was returned or destroyed and that affirms that the Receiving Party
14 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
16 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
17 correspondence or attorney work product, even if such materials contain Protected Material. Any
18 such archival copies that contain or constitute Protected Material remain subject to this
19 Protective Order as set forth in Section 4 (DURATION), above.

20 12. **MISCELLANEOUS**

21 12.1 **Right to Further Relief.** Nothing in this Order abridges the right of any person to
22 seek its modification by the Court in the future.

23 12.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order
24 no Party waives any right it otherwise would have to object to disclosing or producing any
information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
no Party waives any right to object on any ground to use in evidence of any of the material
covered by this Protective Order.

25 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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2 DATED: January 15, 2008

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23 Attorneys for Defendant
24 GFSI, INC. d/b/a GEAR FOR SPORTS, INC.
25

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
2
3 DATED: _____

4 SAMUEL CONTI
5 United States District Court Senior Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Northern District of California on [date] in the case of **ROBERT TRENT JONES II, INC.**
ET AL. V. GFSI, INC. ET AL, CASE NUMBER C 07-04913 SC. I agree to comply with and
to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: